

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WILLIAM WHITFORD, ROGER ANCLAM,)	
EMILY BUNTING, MARY LYNNE)	No. 15-cv-421-bbc
DONOHUE, HELEN HARRIS, WAYNE)	
JENSEN, WENDY SUE JOHNSON, JANET)	
MITCHELL, ALLISON SEATON, JAMES)	
SEATON, JEROME WALLACE, and)	
DONALD WINTER,)	
)	
Plaintiffs,)	
)	
v.)	
)	
GERALD C. NICHOL, THOMAS)	
BARLAND, JOHN FRANKE, HAROLD V.)	
FROEHLICH, KEVIN J. KENNEDY, ELSA)	
LAMELAS, and TIMOTHY VOCKE,)	
)	
Defendants.)	

PROPOSED BRIEF OF JOWEI CHEN
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS

The Defendants and the Defendants' experts in this litigation have cited Dr. Jowei Chen's published academic research for the proposition that Wisconsin's geographic clustering of Democratic voters, rather than partisan gerrymandering, caused the Republican-favoring efficiency gap observed in the Act 43 State Assembly districting plan. *See, e.g.*, Expert Report of N. Goedert (Doc. No. 51) at 12-13, 18, 21. Defendants' reliance on and interpretation of Dr. Chen's published research troubles Dr. Chen because it does not accurately represent his scholarship on the issue and it is misleading and incorrect both in general and as it relates to Wisconsin in particular. Plaintiffs' distinctions of Dr. Chen's methodology, though correct,

merely note differences in the issues addressed in prior publications and the issues in this case. They do not render Dr. Chen's analysis inapplicable to evaluate gerrymandering claims.

A. Dr. Chen's Background

Dr. Chen is an associate professor in the Department of Political Science at the University of Michigan, Ann Arbor. He is also a faculty associate at the Center for Political Studies of the Institute for Social Research at the University of Michigan and a research associate at the Spatial Social Science Laboratory at Stanford University. In 2007, he received a M.S. in Statistics from Stanford University, and in 2009, he received a Ph.D. in Political Science from Stanford University. He has published academic papers on political geography and districting in top political-science journals, including *The American Journal of Political Science*, *The American Political Science Review*, and *The Quarterly Journal of Political Science*.¹ Dr. Chen's academic areas of expertise include spatial statistics, redistricting, gerrymandering, the Voting Rights Act, legislatures, elections, and political geography. In particular, he has expertise in the use of computer algorithms and geographic information systems (GIS) to study questions related to political and economic geography and redistricting.²

¹ *Voter Partisanship and the Effect of Distributive Spending on Political Participation*, American Journal of Political Science, Vol. 57, No. 1: 200-217 (2012); *The Law of k/n: The Effect of Chamber Size on Government Spending in Bicameral Legislatures*, American Political Science Review, Vol. 101, No. 4: 657-676 (2007); *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures*, Quarterly Journal of Political Science, Vol. 8, No. 3: 239-269 (2013).

² Dr. Chen has also provided expert reports in the following redistricting court cases: *Missouri National Association for the Advancement of Colored People v. Ferguson-Florissant School District and St. Louis County Board of Election Commissioners* (E.D. Mo. 2014); *Rene Romo et al. v. Ken Detzner et al.* (Fla. 2d Judicial Cir. Leon Cnty. 2013); *The League of Women Voters of Florida et al. v. Ken Detzner et al.* (Fla. 2d Judicial Cir. Leon Cnty. 2012); *Wright et al. v. McCrory et al.* (E.D. N.C. 2013); *Raleigh Wake Citizens Association et al. v. Wake County Board of Elections* (E.D. N.C. 2015); *Corrine Brown et al. v. Ken Detzner et al.* (N.D. Fla. 2015).

B. Dr. Chen's Objection to Defendant's Interpretation of His Work

Defendants argue that Wisconsin Democrats are disadvantaged by geography, rather than by an intentional partisan gerrymander. *See, e.g.,* Defs.' Br. in Support of Summ. J. at 27 ("Both Goedert and Trendle rely on recent work by political scientists Jowei Chen of the University of Michigan and Jonathan Rodden of Stanford University."); Expert Report of N. Goedert (Doc. No. 51) at 12-13, 18, 21. Dr. Chen disagrees. The Defendants' misapplication of Dr. Chen's published work to the facts of this case suffers from several fundamental flaws.

As Dr. Chen has made clear throughout his published research, some natural electoral bias due to political geography does not preclude a state legislature from gerrymandering its districting plans to produce greater, in this case far greater, electoral bias. Both natural geography and intentional partisan gerrymandering can contribute to a districting plan's electoral bias.³ Furthermore, Dr. Chen's previously published research discusses in detail how computerized districting simulations quantify how much electoral bias is caused by natural political geography and other legally permissible factors.⁴ Dr. Chen has applied his districting simulation methodology to analyze plans in several other states, but has never before analyzed Wisconsin's Act 43 or other Wisconsin maps. Dr. Chen is concerned that his work is being misinterpreted and misapplied by Defendants, and wishes to explain how that is so.

Although Dr. Chen had not previously analyzed Wisconsin's Act 43 in his published research, it was a straightforward matter for him to apply his computer simulation methodology and statistical tests developed in his published work to Wisconsin. Those results, attached hereto in Exhibit A, show that Dr. Chen's methods and work actually demonstrate that Act 43's

³ *See Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures*, Quarterly Journal of Political Science, Vol. 8, No. 3: 239-269 (2013).

⁴ *See id.*

political bias does **not** arrive solely, or even significantly, from political geography. This is the opposite of Defendants' position on Dr. Chen's work.

C. Why Dr. Chen's Methodology Applies to Evaluate Partisan Bias in a Districting Plan

Plaintiffs' contentions that Dr. Chen's methodology is inapplicable to this case are correct, but irrelevant.

First, Plaintiffs are correct that the cited articles did not consider Voting Rights Act issues. But the problems addressed in Dr. Chen's earlier publications did not address the lawfulness of any state plan. And, as shown below, Voting Rights Act compliance can be factored in, and was in the following analyses of Act 43.

Second, presidential voting data is often more reliable than local race data to gauge the partisan bias of a district. Long-standing incumbency and other local factors may affect a district, but are not permanent measures of the district's partisan bias.

Third, it is no criticism of Dr. Chen's methodology as applied here to point out, as Plaintiffs do correctly, that his methodology generates a much smaller number of plans than one that is limited only by equal population requirements. His purpose is to identify plans that not only meet equal population requirements, but also consider compactness and community of interests as well. These additional requirements eliminate many possible equal population plans.

Fourth, the Plaintiffs' brief mischaracterizes the Fryer and Holden study, whose results actually support Dr. Chen's published research on gerrymandering and electoral bias.⁵ The Fryer and Holden study finds that simulated, compact districts exhibit a smaller degree of electoral bias in many states when compared to the enacted, existing Congressional maps in those respective

⁵ See Roland G. Fryer Jr. & Richard Holden, *Measuring the Compactness of Political Districting Plans*, Journal of Law and Economics, Vol. 54, No. 3, 493-535 (2011).

states. This is exactly what Dr. Chen argued in his research and in his expert work on gerrymandering, and this is precisely what he has found when analyzing Wisconsin's enacted Assembly plan in Act 43: a simulated plan with more compact districts exhibits less bias than the Legislature's enacted plan.

Furthermore, Fryer and Holden do not find electoral bias to be "pro-Democratic in all cases." Instead, Fryer and Holden find that as Democrats' vote share increases, the Democratic Party's seat share increases as well.⁶

D. Conclusion

Despite Plaintiffs' contentions, Dr. Chen's work is directly relevant to the central issue in this or any other gerrymandering case: is there a manageable standard to evaluate partisan bias in redistricting? Defendants' portrayal of Dr. Chen's scholarship to support their position is not accurate. Defendants' conclusions, to the extent based upon reliance on his work, should not be credited. Dr. Chen has demonstrated through the attached exhibit that, as applied to Wisconsin specifically, his analysis supports Plaintiffs rather than Defendants.

Date: March 17, 2016.

Respectfully submitted,

s/ Theodore R. Boehm
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⁶ See *id.* at 514.

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2016, I electronically filed the foregoing Proposed Brief with the Clerk of the Court using the ECF system which will send notification of such filing by electronic mail to all ECF participants:

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